

1 BRIAN FAHLING, WSBA #18894
2 Law Office of Brian Fahling
3 8124 NE 166th St
4 Kenmore, WA 98028
(425) 802-7326

5 ERIC KNIFFIN
6 Kniffin Law
7 102 S. Tejon St., Suite 1100
8 Colorado Springs, CO 80903
(719) 212-4391

Honorable Thomas O. Rice

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 NICHOLAS ROLOVICH,

13 Plaintiff,

14 v.

15 WASHINGTON STATE
16 UNIVERSITY, an agency of the
17 State of Washington; PATRICK
18 CHUN, Director of Athletics for
19 Washington State University, in his
20 individual capacity; and JAY
21 INSLEE, Governor, in his official
capacity,

22 Defendants.

No. 2:22-cv-00319-TOR

OBJECTION TO COURT RULING
FOR DEFENDANTS WITHOUT
GIVING PLAINTIFF AN
OPPORTUNITY TO RESPOND TO
DEFENDANTS' MOTION

23 After the close of business on Friday, March 10, Defendants filed their
24 Motion for Leave to File Excess Pages, setting the hearing date on their motion
25 for today, Monday, March 13 (ECF No. 17). This morning, at 10:04 a.m., only
26

OBJECTION TO COURT RULING FOR
DEFENDANTS WITHOUT GIVING PLAINTIFF
AN OPPORTUNITY TO RESPOND TO
DEFENDANTS' MOTION -1

1 a few business hours after Defendants filed their Motion, Plaintiff received
2 notice that the Court had already granted Defendants' Motion, for "good cause
3 shown" (ECF No. 18).
4

5 Plaintiff files this objection to make a record of the response it had
6 intended to file today and to document the reasons why the Defendants' request
7 is improper, is not supported by good cause, and should have been denied.
8

9 **ARGUMENT**

10 For the reasons set out below, the Defendants' Motion should have been
11 denied. First, Defendants did not "establish the necessity for an immediate
12 hearing," as required by L.Civ.R.7(2)(C). Second, even if they had, the same
13 Local Rule requires that Defendants give Plaintiff at least a business day to file
14 a response. Defendants' Motion was thus twice in violation of this Court's
15 rules, even before one gets to the merits. Third and finally, Defendants failed to
16 establish good cause for why this Court should grant their untimely motion for
17 excess pages.
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21 For all these reasons, the Court should have outright denied Defendants'
22 motion. Or at the very least, should have given Plaintiff an opportunity to
23 respond to the Defendants' Motion and point out its shortcomings.
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1 **A. Defendants created their “time sensitive” problem, and thus**
2 **are not entitled to an expedited hearing under LCivR 7(2)(c).**

3 Local Civil Rule 7(i)(2)(C) provides, in part: “To seek an expedited
4 hearing on a time sensitive matter, the moving party must file a motion to
5 expedite, which . . . sets a date of hearing that is *not less than 7 days* after the
6 motion's filing. (Emphasis supplied). If the motion “requires more immediate
7 judicial attention, the motion shall establish the necessity for an immediate
8 hearing.”
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11 Defendants filed their Motion at approximately 8:30 p.m. on Friday,
12 March 10, and set the hearing date for Monday, March 13, ECF No. 10, in clear
13 violation of LCivR 7(2)(c). Defendants cannot violate this rule without leave of
14 Court, and without establishing the “necessity” for such an emergency timeline.
15 Defendants have not met their burden.
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18 While Defendants could not have known when this Court would rule on
19 Plaintiff’s Motion to Remand, they did know that they would have to file a
20 responsive pleading within seven days of the Court’s order. Defendants’ actions
21 show that they have long been aware of this deadline, and have long been
22 planning what their motion to dismiss would entail. There is no reason for this
23 last minute motion, especially given the prejudice that their choices have caused
24 Plaintiff.
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1 On December 20, 2022, Plaintiff agreed to an extension of Defendants'
2 answer date to January 13, 2023, ECF No. 2, and on January 12, 2023, Plaintiff
3 again agreed to Defendants' proposal that their deadline be extended again to
4 within seven days of this Court's Order on Plaintiff's Motion to Remand (ECF
5 No. 10).
6

7
8 Defendants, then, have had months to prepare a responsive pleading to
9 Plaintiff's Complaint. At any point during this time they could have filed a
10 motion for excess pages. That motion could have been filed on a non-
11 emergency basis. That motion could have been filed with a motion date in
12 compliance with the Local Rules. That motion would presumably have given
13 Plaintiff the opportunity to respond.
14

15
16 Furthermore, Defendants have known for some time that their responsive
17 pleading would require more than the twenty pages allowed by court rule. In a
18 March 9 email to Plaintiff's counsel, Defendants' counsel wrote, "[t]he WSU
19 Defendants (WSU and Pat Chun) intend to move to dismiss before [the March
20 15] deadline." *See* Email from Spencer Coats to Plaintiff's counsel, Thursday,
21 Mar 9, 2023, at 4:01 PM (attached as Exhibit A).
22
23

24 Under these circumstances, Defendants have not "establish[ed] the
25 necessity" for a departure from the "expedited hearing" timeline in LCivR
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1 7(i)(2)(C). A necessity caused through Defendants’ own negligence is not a
2 necessity that justifies departures from the Local Rules “expedited hearing”
3 schedule and depriving Plaintiff the opportunity to respond.
4

5 **B. In any case, any expedited hearing schedule must give the**
6 **opposing party a business day to respond.**

7 Even if the Court had found that the Defendants had “[e]stablished the
8 necessity” for a departure from the Court’s “expedited hearing” timeline, the
9 Local Rules then state that “[a] response memorandum to an expedited motion
10 is due the day before the hearing set for the expedited motion.” The Local Rules
11 therefore anticipate that there must be *at least one business day* between the day
12 the movant files and the proposed hearing date.
13
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15 The Defendants did not follow the Local Rules in setting a motion date
16 for March 13, the business day after they filed their motion. The Court’s Order,
17 which was issued only one business hour after the Defendants’ filed, does not
18 acknowledge this requirement in the Local Rules and therefore does not provide
19 justification for setting it aside. This is yet another reason why the Defendants’
20 Motion should have been denied.
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C. Defendants have not shown “good cause” for exceeding the page limits in the Local Rules.

Even if the Defendants had “[e]stablished the necessity” for departing from the Local Rules’ “expedited hearing” schedule, and depriving Plaintiff of any opportunity to respond, their Motion does not show “good cause” for why they should be allowed to file “excess pages” in their forthcoming motion to dismiss.

1. Defendants’ Motion misstates the nature of this case.

Defendants’ first argument in support of their Motion claims that Plaintiff filed this lawsuit as a challenge to “the State’s and WSU’s response to the COVID-19 pandemic, as well as Governor Jay Inslee’s Proclamation 21-14 and WSU’s implementation thereof (ECF No. 17 at 2). The Defendants did likewise in their response to Plaintiff’s motion to remand (ECF No. 13 at 2-3). They claim the need to respond to this “subject matter of exceptional public importance” is one of the reasons why they need excessive pages for their motion to dismiss (ECF No. 17 at 2).

This is not and has never been a challenge to Washington State’s or any of the Defendants’ responses to the COVID-19 pandemic. To the contrary, this lawsuit is about the unlawful, discriminatory, and unconstitutional manner in

1 which Defendants terminated Plaintiff Nicholas Rolovich from his position at
2 WSU.

3
4 Defendants and this Court are aware that this is the Plaintiff's position.
5 This is clear from Plaintiff's Complaint and from every substantive brief
6 Plaintiff has filed in this case to date. As stated in Plaintiff's Motion to Remand,
7 "each of his claims is interrelated with, arises from, and goes directly to the
8 enforcement and construction of the employment agreement between WSU and
9 himself" (ECF 17 at 2). *See also, generally*, ECF No. 1-1, pp. 95-109.
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11
12 It is clear that Defendants would prefer to change the subject in order to
13 avoid defending their actions toward Plaintiff. But the Court should see through
14 the Defendants' rhetoric. Their ongoing efforts to ignore Plaintiff's claims does
15 not give them good cause to violate the page limits set out in the Local Rules.
16

17 **2. Defendants' Have not Shown Good Cause to Exceed**
18 **Page Limits.**

19 Defendant's second and third arguments for good cause follow from their
20 first. They claim they need excess pages because of the number and complexity
21 of Plaintiff's claims. Doubtless, Defendants' motion will spend several pages
22 arguing their theory of the case, defending each of the Defendants' actions in
23 responding to COVID-19. But, as Plaintiff has stated unambiguously and
24 repeatedly, those issues are not at issue in this case. Plaintiff challenges only
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1 Defendants' actions toward *him*. The Defendants' actions towards others—for
2 example, the Governor's counsel's declaration that the State would give
3 religious requests for exemptions more scrutiny than secular (medical) requests
4 (ECF 1-1 ¶ 36), or Defendant Chun's failure to follow COVID protocols
5 (*id.* ¶ 73), or Defendant WSU's non-response to Chun's violation of COVID
6 protocols (*id.*)—are relevant only insofar as they show that Defendants
7 discriminated against Plaintiff in violation of his legal and constitutional rights
8 in justifying their “just cause” termination of Plaintiff.
9

10
11 If Defendants would simply stick to the relevant issues as set out in
12 Plaintiffs' complaint, Plaintiff submits Defendants would be able to argue their
13 case within the page limits established in the Local Rules.
14

15 **3. Longer briefs do not promote “judicial economy.”**

16
17 Defendants also claim that “judicial economy is better served” by
18 granting their motion for “excess pages” (ECF No. 17 at 2-3). To the contrary,
19 “[j]udicial economy and concise argument are purposes of the page limit.”
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21 *Snyder v. HSBC Bank, USA, N.A.*, 913 F. Supp. 2d 755, 766 (D. Ariz. 2012).
22 Exceeding the page limits is certainly not in the interest judicial economy, but is
23 an invitation to prolixity and confusion. This is especially true when it appears
24 that Defendants intend to argue about the legality of their response to the
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1 COVID-19 pandemic, and the legality of Governor Inslee's vaccine mandate
2 for state employees, neither of which Plaintiff has challenged.
3

4 **CONCLUSION**

5 For the forgoing reasons, Plaintiff notes his objection to the Order
6 granting Defendants' Motion.
7

8 DATED this 13th day of March, 2023.

9 **LAW OFFICE OF BRIAN FAHLING**

10
11 By: /s/Brian Fahling
12 Brian Fahling WSBA #18894

13 *Attorneys for Plaintiff*
14

15 **KNIFFIN LAW**

16
17 By: /s/Eric Kniffin
18 Eric Kniffin CO Bar #48016
(Admitted *Pro Hac Vice*)

19 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of March, 2023, I electronically filed the forgoing OBJECTION TO COURT RULING FOR DEFENDANTS WITHOUT GIVING PLAINTIFF AN OPPORTUNITY TO RESPOND TO DEFENDANTS' MOTION, with the Clerk of Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice. I hereby certify that none of the represented parties are non-CM/ECF participants.

LAW OFFICE OF BRIAN FAHLING

By: /s/ Brian Fahling
Brian Fahling